

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Walter W. Thiemann,	:	Case No. C-1-00-793
on behalf of himself and of	:	
all others similarly situated,	:	Judge Sandra S. Beckwith
	:	
Plaintiff,	:	Magistrate Judge Hogan
	:	
vs.	:	
	:	
OHSL Financial Corporation, et al.	:	
	:	
Defendants.	:	

**REPLY BRIEF IN FURTHER SUPPORT OF MOTION FOR LEAVE TO
SUBMIT SUPPLEMENTAL MATERIAL (DOC. NO. 386)**

Plaintiffs respectfully reply to Non-Parties Keating, Muething & Klekamp PPL and Mark Weiss' Memorandum in Opposition to Plaintiffs' Motion for Leave to Leave to Submit Supplemental Materials regarding Plaintiffs' Motion for an Interlocutory Appeal (Doc. No. 341) and submit the following Memorandum in support thereof.

MEMORANDUM

I. KMK Does Not Have a Valid Reason to Oppose Plaintiffs' Motion for Leave to Submit Supplemental Materials

Non-Parties Keating, Muething & Klekamp PPL and Mark Weiss (hereinafter "KMK") have failed to present any argument which requires the denial of Plaintiff's Motion for Leave to Submit Supplemental Materials. First, Non-Parties Keating, Muething & Klekamp PPL and Mark Weiss' Memorandum in Opposition to Plaintiffs' Motion for Leave to Leave to Submit Supplemental Material (hereinafter "KMK

Memorandum in Opposition”) argues or implies that these supplemental materials are irrelevant or do not offer any new or additional arguments or case law that necessitate or justify supplementation. This argument is false because the SEC’s amicus brief certainly supplements the Plaintiffs’ previous arguments, and the SEC’s arguments are directly applicable to this case. Further, as noted by the date of the SEC’s brief, this amicus brief was only recently submitted and was not available when Plaintiffs’ filed their Motion to Certify This Court’s Order Dismissing the Case Against Defendants Keating, Muething & Klekamp, LLP and Mark A. Weiss for Immediate Appeal Pursuant to 28 U.S.C. §1292 (hereinafter “Motion to Certify Order”). However, although this is reason enough for this Court to consider these supplemental materials, this is not the main reason why the Plaintiffs filed their Motion for Leave to Submit Supplemental Materials, or why it should be granted.

The Plaintiffs filed their Motion for Leave to Leave to Submit Supplemental Material in order to reinforce the argument that there is a substantial split of opinion in the law as to the retroactive application of certain provisions of the Sarbanes-Oxley Act. To certify a question for appeal under § 1292(b), this Court must find that the order at issue involves a controlling question of law as to which there is a substantial ground for difference of opinion, and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). The importance of the issue of retroactive application of certain provisions of the Sarbanes-Oxley Act is amply demonstrated by the SEC taking the unusual action of filing an amicus brief on this topic. As a result, this brief is further support for the argument that the Plaintiffs were correct to file their Motion to Certify Order.

Second, the Plaintiffs wish to make clear to the Court that this reply brief is not a full response on the merits, but merely a brief reply on why the supplemental materials should be considered. Should the Court wish additional briefing on this topic, Plaintiffs will be happy to provide it.

Finally, the Plaintiffs would be remiss if they did not acknowledge what a pleasant turn of events it is for the KMK to focus its wrath upon someone other than the Plaintiffs. This proves that KMK is willing to defame any party or entity, no matter how nationally respected, who challenges its position. However, what it is even more revealing is that it shows that KMK doth protest too much. If KMK did not feel so threatened by the SEC's arguments, it would not feel the need to prepare such a critical response to Plaintiffs' Motion for Leave to Leave to Submit Supplemental Materials.

II. CONCLUSION

Thus, for the foregoing reasons, as well as those submitted in the opening brief, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Leave to Submit Supplemental Materials regarding Plaintiffs' Motion for an Interlocutory Appeal (Doc. No. 341).

Respectfully Submitted,

GENE MESH & ASSOCIATES

Dated: 8 October 2004

By: /s/ Michael G. Brautigam
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief in Further Support of Motion for Leave to File Supplemental Materials (Doc. No. 386) was filed as per the Court's electronic filing system as follows this 8th day of October 2004:

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